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MUHAMMAD SYUHAIMI HJ ABDUL JOFLI & ANOR v. HAMIRAH IZZATIE SABARIN

HIGH COURT MALAYA, KUALA LUMPUR
JOHAN LEE KIEN HOW JC
[CIVIL SUIT NO: WA-23CY-39-07-2019]
21 NOVEMBER 2022

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Abstract – *Social media users should be responsible in posting thoughts or comments online. Freedom of speech is to be preached but it should be done within limits and not at the expense of damaging and ruining the image or reputation of others. After all, publication on the internet means a wide publication. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel. The more closely it touches the injured party's reputation, the more serious it is likely to be.*

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TORT: *Defamation – Defamatory statements – Postings published on Twitter account – Whether all elements of tort of defamation proven – Whether statements bore defamatory imputations – Whether statements referred to or reflected upon claimant's reputation – Whether statements published to third person by tortfeasor – Whether postings were fair comments*

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This was the plaintiffs' claim against the defendant for damages for the publication of alleged defamatory statements *via* several postings or tweets published by the latter on her Twitter account '@mighv' which allegedly referred to the plaintiffs. The plaintiffs pleaded that five statements made by the defendant had defamatory tendencies ('impugned postings'). In all accounts, the plaintiffs' names were never mentioned in any of the impugned postings. The facts showed that an entertainment portal, mStar, narrated the first plaintiff's action in purchasing a RM3,000 stroller after he forgot to bring one that the plaintiffs had at home. The article went viral and the plaintiffs received several backlash and condemnation. Two Twitter users commented negatively on the issue but later posted apology videos which were made in consequence to the plaintiffs' demand for an apology otherwise be prepared to be sued by the plaintiffs. The second plaintiff reposted and/or republished the apology videos on her Instagram and the plaintiffs went viral again. The defendant, around the same time, tweeted and posted two statements (i) 'So, twitterjaya kena appoint sorang lawyer untuk mewakili kita semua lah macam ni. Ada lawyer yang available tak?' ('first tweet'); and (ii) 'lepas ni kutuk jangan sebut nama lah. Biar dia jem terus tak tahu nak search apa' ('second tweet'). Seven minutes later, the defendant posted 'laki bini gila. End of story' ('first defamatory statement'). The defendant claimed

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that the impugned postings were only fair comments regarding the controversies surrounding the plaintiffs. The issues that arose were whether the plaintiffs had proven all three elements of the tort of defamation, specifically: (i) whether the plaintiffs had shown that the statements bore defamatory imputations; (ii) whether the statements referred to or reflected upon the plaintiff's reputation; and (iii) whether the statements were published to a third person by the defendant.

Held (allowing claim):

(1) Based on the facts and circumstances prior to and leading to the publication of the impugned postings, it was always the intention of the defendant to use the phrase 'laki bini' to refer to the plaintiffs. Any reasonable person would understand the phrase 'laki bini' indeed referred to the plaintiffs. Moreover, other Twitter users who had replied and/or commented on the first defamatory statement had easily linked and identified it with the plaintiffs. The defendant was aware of the controversy surrounding the plaintiffs at the time since she admitted in her defence that her first tweet was regarding an apology video of another Twitter user. The first defamatory statement was also published merely seven minutes after her second tweet. Further, the defendant's second tweet had, in like manner, laid out that the plaintiffs' names were intentionally excluded to ensure that they would not be aware of the impugned postings. (paras 10, 17 & 20)

(2) The first defamatory statement, in its natural and ordinary meaning, implied that the plaintiffs were insane. Hence, it was capable of being defamatory. Likewise, the second defamatory statement was bound to be capable of being defamatory since it was a direct and consequential (five minutes after the first defamatory statement) insinuation that both the plaintiffs were meant for each other because of their insanity and lunatic behaviour. The same applied to the third defamatory statement (about 30 minutes after the second defamatory statement) which implied that having parents who were 'gila' was shameful and that 'gila' was heredity and heritable. In all these statements, the word 'gila' could only mean insane, crazy or lunatic. (para 43)

(3) In order for the defendant to succeed in raising the defence of fair comment, there were four essential elements which must be fulfilled: (i) the words complained of were comment, although they may consist of or include inferences of fact; (ii) the comment was on a matter of public interest; (iii) the comment was based on fact; and (iv) the comment was one which a fair-minded person could honestly make on the facts proved. The lack of any of the four elements would deprive the defendant of this defence. The defendant in this case failed to fulfil all four elements. (paras 49 & 50)

(4) There was no reason how alleging someone as 'gila' without any medical basis was a comment or inferences of fact. These comments were also nothing of public interest. If the defendant was making the impugned postings as comments which were based on facts, she had to adduce evidence to establish the facts which were relied on. This, she had not done. Nothing had ever been adduced to suggest, prove, or establish the insanity or lunatic state of mind of the plaintiffs. Also, it was absolutely absurd to even suggest that the comments were one which a fair-minded person could honestly make on the facts proved. No facts had ever been established with regard to the plaintiffs' state of mind. Thus, the defendant failed miserably to seek her defence under fair comment. (para 50)

(5) The defendant's action in ascribing the plaintiffs as 'gila' could be considered as grave and severe accusation that led to negative implications against the plaintiffs' integrity, credibility, and personal and professional reputation. The court must consider the extent of the publication of the impugned postings. In the present case, both parties were social influencers who had quite a substantial following on their respective social media platforms. Thus, the possibility of limited publication was out of question. There were indeed few hundred thousand readers of the impugned postings out there. Judgment was entered against the defendant as follows: (i) a global sum of RM15,000 was to be paid by the defendant to each of the plaintiffs; (ii) a full and unequivocal public apology on terms to be approved by the plaintiffs to be published on the defendant's Twitter account and other social networking sites designated by the plaintiffs and accessible to the public; and (iii) an injunction to restrain the defendant from further publishing the first to fifth defamatory statements and/or any such defamatory and/or malicious and/or harmful falsehood against the plaintiffs in any social networking sites including but without limitation to Twitter and/or any online mass media. (paras 59, 60 & 63)

Case(s) referred to:

Abdul Khalid Jafri Bakar Shah v. Party Islam Se Malaysia [2001] 4 CLJ 15 HC ***(refd)***

Asia Pacific Higher Learning Sdn Bhd v. Eagle One Investment Sdn Bhd & Ors [2018] 1 LNS 56 HC ***(refd)***

Ayob Saud v. TS Sambanthanmurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Charles Ganske v. Louise Daphne Mencsh (No. 19-CV-6943 (RA)) ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 LNS 1157 CA ***(refd)***

Christina Liew Chin Jin v. Leksun Injil [2021] MLJU 1373 HC ***(refd)***

Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli [2022] 5 CLJ 487 FC ***(refd)***

Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor [2018] 1 CLJ 145 FC ***(refd)***

Datuk Seri Anwar Ibrahim v. Wan Muhammad Azri Wan Deris [2015] 2 CLJ 557 HC ***(refd)***
Fitters Diversified Sdn Bhd & Ors v. Mohd Roslan Mahayudin & Ors [2022] MLJU 290 ***(refd)***
Henry Wong Jan Fook v. John Lee & Anor [1975] 1 LNS 57 FC ***(refd)***
John v. MGN Ltd [1997] QB 586 ***(refd)***
Joshua Benjamin Jeyaretnam v. Goh Chok Tong [1989] 1 LNS 34 PC ***(refd)***
Lachaux v. Evening Standard Ltd; Lachaux v. AOL (UK) Ltd [2015] EWHC 2242 ***(refd)***
Mahfuz Hj Omar v. Muhammad Sanusi Md Nor [2021] 1 LNS 1826 HC ***(refd)***
Monroe v. Hopkins [2017] 4 WLR 68; [2017] EWHC 433 ***(refd)***
Morgan v. Odhams Press Ltd & Anor [1971] 2 All ER 1156 ***(refd)***
Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor [2021] 3 CLJ 603 FC ***(refd)***
Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee [2019] 3 CLJ 729 FC ***(refd)***
Sivabalan Asapathy v. The New Straits Times Press (M) Bhd [2010] 7 CLJ 885 HC ***(refd)***

Legislation referred to:
Defamation Act 1957, s. 9

For the plaintiff - Abdul Hakeem Aiman; The Chambers Of KK Tan
For the defendant - Afiq Audy, Rabiatul Adawiyah Sulaiman & Helmi Zaharia; M/s Audy Basharudin & Co

Reported by Lina E

JUDGMENT

Johan Lee Kien How JC:

Introduction

[1] This is the plaintiffs' claim ('this claim') for damages against the defendant for the publication of few alleged defamatory statements *via* several postings or 'tweets' published by the latter on her Twitter account, '@mighv' ('the defendant's Twitter account').

Facts Of The Case

[2] Briefly, on 24 June 2019, the defendant posted several statements on the defendant's Twitter account in which the statements were allegedly referring to the plaintiffs. The plaintiffs pleaded that five statements were made by the defendant and contended that all five statements have defamatory tendencies (collectively, 'the impugned postings'). As a result, the plaintiffs had filed this claim against the defendant. For ease of reference, the impugned postings (and the loose English translation of them in italic) are reproduced as follows:

Date	Time	Defendant's Statements
24.06.2019	10.53 pm	Laki bini gila. End of story. *(Husband and wife are crazy/insane. End of story.)* *('1st Defamatory Statement')*
	10.59 pm	Well, Betul lah orang cakap lelaki baik untuk perempuan baik. Lelaki gila untuk perempuan gila. *(Well, true as people says, good men marry good ladies. Crazy men are for crazy ladies.)* *('2nd Defamatory Statement')*
	11.25 pm	Berdoalah kalau korang kaya one day, jangan jadi gila. Takut turun dekat anak-anak nanti susah pulak. Malu dapat parents gila. *(Please pray so that if you guys become rich one day, you won't become crazy. Fear that it may pass down to the children later and cause difficulties. Shameful to have crazy parents.)* *('3rd Defamatory Statement')*
	11.09 pm	Dan hari ini mama pesan 'Suami korang nanti perlulah dari keluarga yang baik-baik, percakapannya yang baik-baik, perbuatannya juga yang baik-baik. Kena cari suami yang sentiasa guide kita jadi better. Bukannya yang support kalau kita meroyan dekat social media. "Uwuuuu" *(And today mum reminds, 'your husbands in the future must be from good families, his conversation is good, his deeds are also good. Must look for husbands who could always guide us to be better. Not someone who will support if we frolic/romp through social media.' Uwuuu)* *('4th Defamatory Statement')*
26.06.2019	5.44 pm	Graphics Interchange Format (GIF) of two cats fighting with a caption. "Macam ni bergaduhnya macam mana tak kena cop gila" *(Quarrelling like this how can't be labelled as crazy)* *('5th Defamatory Statement')*

[3] In all accounts, the plaintiffs' names were never mentioned in any of the impugned postings. Hence, the defendant's main contention was that the impugned postings have never referred to the plaintiffs.

The Trial

[4] The plaintiffs called two witnesses (namely the two plaintiffs themselves) during the trial while the defendant called one witness (namely the defendant herself) respectively.

PW1 Muhammad Syuhaimi bin Haji Abdul Jofli

PW2 Nur Munirah binti Mahmood

DW1 Hamirah Izzatie binti Sabarin

Decision And Findings Of The Court

[5] It is trite law that for a plaintiff to succeed in a defamation action, he must prove all three elements of the tort of defamation, namely,:

(i) the plaintiff must show that the statement bears defamatory imputations;

(ii) the statement must refer to or reflect upon the plaintiff's reputation; and

(iii) the statement must have been published to a third person by the defendant.

(See *Datuk Seri Anwar Ibrahim v. Wan Muhammad Azri Wan Deris* [2015] 2 CLJ 557; [2014] 9 MLJ 605; *Ayob Saud v. TS Sambanthanmurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] 1 MLJ 315; *Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd* [2010] 7 CLJ 885; [2010] 9 MLJ 320).

[6] In our present case, the plaintiffs filed this claim against the defendant for defamation due to the publication of the impugned postings done by the latter *via* her Twitter account. Since there was no dispute on the third element, I will solely focus on the discussion of the first two elements:

(i) whether the impugned postings referred to the plaintiffs; and

(ii) whether the impugned postings bear defamatory imputation.

Whether The Impugned Postings Referred To The Plaintiffs

[7] One of the most crucial issues that must be determined first in this claim is whether the impugned postings were referring to the plaintiffs. This is because none of the plaintiffs' names were ever mentioned in the impugned postings. Looking at the first defamatory statement, it is obvious that the defendant used the phrase "laki bini" (husband and wife). However, she denied that she used the phrase to refer to the plaintiffs.

[8] In contrast, the plaintiffs argued that any reasonable readers or persons acquainted with the plaintiffs could relate the impugned postings with the plaintiffs. This is evident from the comments and/or replies made by other Twitter users in which most of them came to a similar conclusion that the phrase "laki bini" was indeed referring to the plaintiffs.

[9] In order to understand the context of the publication of the impugned postings, it is wise for me to lay down the fact that led to their publication. Around June 2019, there was an article written by one entertainment portal, mStar, narrating the first plaintiff's action in purchasing a RM3,000 stroller after he forgot to bring one that the plaintiffs had at home. Consequently, the article went viral, and the plaintiffs received several backlash and condemnation because of it. Like any other Twitter users, one @BenzZahid ('Benzahid') and one Siti Shahrina Atikah binti Zulkifli ('Shahrina') also commented on the issue negatively but later, both of them posted apology videos for such comments. The apology videos were made in consequence to the plaintiffs' lawyer demanding all negative commentors to apologise to the plaintiffs otherwise be prepared to be sued by the plaintiffs. Afterwards, on 24 June 2019, the second plaintiff reposted and/or re-publish the said apology videos on her Instagram and the plaintiffs went viral again. Among others, the defendant around the same time, tweeted and posted these two statements that particular night:

24.06.2019	10.35 pm	So, twitterjaya kena appoint sorang lawyer untuk mewakili kita semua lah macam ni. Ada lawyer yang available tak? *(So twitterland must appoint a lawyer to represent all of us lah like this. Any lawyer available?)* *('the Defendant's 1st Tweet')*
24.06.2019	10.46 pm	Lepas ini kutuk jangan sebut nama lah. Biar dia jem terus taktahu nak search apa. *(After this when criticise don't mention name lah. Let him be stuck immediately not knowing what to search)* *('the Defendant's 2nd Tweet')*

[10] Following these two statements, about seven minutes later, the defendant posted the first defamatory statement, "Laki bini gila. End of story." Hence, the argument raised by the parties revolves around whether the phrase "laki bini" referred to the plaintiffs. Based on the facts and circumstances prior to and leading to the publication of the impugned postings, I find that it is always the intention of the defendant to use the phrase "laki bini" to refer to the plaintiffs. Hence, I am agreeable with the plaintiffs that any reasonable person would understand the phrase "laki bini" indeed refers to the plaintiffs.

[11] To understand and interpret entries or postings in Twitter, one must view tweets and/or postings made by the users as a whole. The plaintiffs referred to and relied heavily on the recent English case of *Monroe v. Hopkins* [2017] 4 WLR 68; [2017] EWHC 433 (QB) which I find to be of great guidance to our present case. In this case, the claimant had brought a libel claim against the defendant in respect of two 'tweets' published on Twitter. The claimant contended that the defendant's tweets had accused her of vandalising a war memorial and desecrating the memory of those who fought for her freedom. Warby J in allowing the plaintiff's claim, had explained to a great extent the principles applied to Twitter at pp. 7 to 9:

> 34. These well-established rules are perhaps easier to apply in the case of print publications of long standing such as books, newspapers, or magazines, or static online publications, than in the more dynamic and interactive world of *Twitter, where short bursts of pithily expressed information are the norm, and a single tweet rarely exists in isolation from others. A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand, and which form part of what Mr Price has called a "multidimensional conversation".*
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> *35. The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read the tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.* (emphasis added)

[12] Referring to the *ratio* laid down in *Monroe v. Hopkins* (*supra*), in determining whether tweet(s) published by the tortfeasor has any defamatory implication, one must consider the context of the tweet as a whole. The said context of the tweet(s) can be determined by two methods:

(i) by looking at the matters of ordinary general knowledge; and

(ii) by looking at the matters that were put before that reader *via* Twitter.

[13] Warby J in *Monroe v. Hopkins* (*supra*) further premised that if such statements were made other than the offending tweet, the courts should also consider them as a whole in one whole package:

> 38. The third point concerns material on Twitter that is external to the tweet itself. This is perhaps less straightforward. *I would conclude that a matter can be treated as part of the context in which an offending tweet if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of.* This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee v. Telegraph Media Group Ltd* [2010] EWHC 924 (QB); [2010] EMLR 501 at para 29 (Sharp J).

A 39. I would include *as context parts of a wider Twitter conversation in which the offending tweet appeared, and which the representative hypothetical ordinary reader is likely to have read. This would clearly include an earlier tweet or reply which was available to view on the same page as the offending material. It could include earlier material, if sufficiently closely connected. But it is not necessarily the case that it would include tweets from days beforehand. The nature of the medium is such that* B *these disappear from view quite swiftly, for regular users. It may also be necessary, in some cases, to take account of the fact that the way Twitter works means that a given tweet can appear in differing contexts to different groups, or even to different individuals.* As a matter of principle, context for which a defendant is not responsible cannot be held against them on meaning. But it could work to a defendant's advantage. (emphasis added)

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[14] It is to be noted that to succeed in any defamation case, it is not essential that the plaintiff should be named in the defamatory statement. I refer to another English case of *Lachaux v. Independent Print Ltd; Lachaux v. Evening Standard Ltd; Lachaux v. AOL (UK) Ltd* [2015] EWHC 2242 (QB) where Warby J held that:

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> [15] The common law principles applicable to the process I have identified are clearly established, and not the subject of any major dispute. They can therefore be quite shortly summarised, without the need for extensive citation. The nature of the parties' arguments makes it convenient to set out some of the common law principles as to damage at the same time:
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> (1) *"It is an essential element of the cause of action for defamation that the words complained of should be published 'of the [Claimant]": Knupffer v. London Express [1944] AC 116, 120 [1944] 1 All ER 495, 113 LJKB 251. This* F *does not mean the Claimant must be named. The question is whether reasonable people would understand the words to refer to the Claimant. "The test of whether words that do not specifically name the [Claimant] refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the Claimant to believe that he was the person referred to? David Syme v. Canavan* (1918) 25 CLR 234, 238 (Isaacs J).
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> G (2) *This is an objective test. If the words would be so understood by such people it is not necessary for the Claimant to prove that there were in fact such people, who read the offending words; so an individual defamed by name in Cornwall has a cause of action even if he was unknown in that county at the time of publication:* see *Gatley on Libel & Slander* 12th ed para 7.3; *Multigroup Bulgaria Ltd v. Oxford Analytica Ltd* [2001] 1 WLR 74, [2001] EMLR H 28, 22 (Eady J) cited with approval in *Jameel* at 28.
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> To this extent, I do not accept Mr Price's submission for IPL and ESL that it is an essential element of this claim for the Claimant to prove that at least one person understood the words complained of to refer to him. That is not an essential element of the cause of action at common law. I Whether such proof is necessary to satisfy the serious harm requirement, or to overcome a *Jameel* application, or both, is a separate matter. (emphasis added)

[15] To extend and apply the *ratio* of both *Monroe v. Hopkins* (*supra*) and *Lachaux* (*supra*), it is clear that the identity of the individual defamed can be determined through the context of the tweet as a whole including reference to any other statements published contemporaneous therewith other than the offending tweet. Thus, the circumstances leading to the publication could shed some light to assist the courts to determine whether the postings in the defendant's Twitter account were indeed referring to the claimant. In our present case, during cross-examination, learned counsel of the defendant suggested that the phrase "laki bini" is a generalised term and is not exclusively referred to the plaintiffs. To this PW1 disagreed and he has further testified and explained this in his re-examination:

[Notes of Proceedings at page 52]

PC (AH): … Ini pernyataan fitnah pertama, kamu setuju ya. Nama anda dan Plaintif Kedua tidak disebut, setuju. Kemudian ada beberapa soalan ditanyakan oleh Peguam Defendan, dengarya. Terma laki bini tidak merujuk kepada anda En. Syuhaimi tak setuju. Dan dicadangkan boleh jadi sesiapa pun, pun En. Syuhaimi tidak setuju. Kenapa tak setuju?

PW1: Melihat kepada gambar disini, balasan dari daddypooh dia ada menulis "hati-hati weh, kalau nak mention pun supaya dia melambak-lambak manusia batu api akan mention SS Twit korang. Jadi ini merujuk kepada saya. Kenapa perlu hati-hati? Dan ini juga menunjukkan bahawa penulisan ini sebenarnya sedang menuju kepada saya.

PC(AH): Kenapa En. Syuhaimi beranggapan bahawa penyataan fitnah pertama dan reply pengguna bernama "daddypooh" itu merujuk kepada En. Syuhaimi?

PW1: Kerana situasi saya pada ketika itu sedang viral atau sedang popular dengan isu "stroller". Jadi masuk kepada berita, suratkhabar … jadi benda ini menjadi perbualan orang ramai ketika itulah. Dan Twit ini ditulis ketika viral itu sedang berlaku.

[16] PW1 further explained this later:

[Notes of Proceedings page 65]

PC(AH): Kemudian dibacakan lagi dan diulang lagi tentang penggunaan 'exclusiviti' laki, bini ya. Sebagaimana En. Syuhaimi tak setuju. Tadi soalan saya bukan itu. Soalan saya tetang komen di bawah yang En. Syuhaimi rujuk itu. Su masih rujuk muka surat 26?

PW1: Betul.

PC(AH): Ya, baik. Peguam Defendan ada merujuk kepada komen yang diberikan oleh Cik Wani Nisa Amani. Yang mana penggunaan acronym 'JE'.

PW1: Tepat.

PC(AH): Dia kata situ wabak, 'JE 10'. Apa yang En. Syuhaimi faham dengan wabak 'JE 10'?

PW1: Isu daripada ini adalah isu laki bini. Jadi bila laki bini dia adalah campuran antara saya dan juga Plaintif Kedua, suami isteri. Wabak 'JE' ini adalah merujuk kepada saya dan juga isteri saya. Saya dikenali di social media sebagai 'jo' atau nama pena saya "jofliam" dan isteri saya 'cikepal'. Jadi J merujuk kepada 'jo' E merujuk kepada 'epal'. Siapa lagi?

[17] Moreover, as submitted by learned counsel for the plaintiffs, other Twitter users who had replied and/or commented on the first defamatory statement had easily linked and identified it with the plaintiffs. Here are few examples of the statements made by Twitter users in response to the first defamatory statement bearing in mind the names 'jofliam' and 'cik epal' are the nicknames of the first plaintiff and the second plaintiff respectively in social media:

Wabak JE kan [emoticon]

Still denying? Ok sis (laughing emoji) I'll play along and pretend you're not talking about cikepal and jofliam

You ckp about cik epal n jofliam ke?

j dan e?

apa penyakit nyamuk pula [emoji] J&E tu penama utk laki bini tu kot. Hihi, teka ja.

[18] To this, I refer to the recent case of *Mahfuz Hj Omar v. Muhammad Sanusi Md Nor* [2021] 1 LNS 1826; [2022] 2 MLRH 482. In this case, the defendant argued that the Facebook posting was not targeted at the plaintiff since the plaintiff's name was never mentioned personally and the word 'mereka' appears in the said posting should therefore be referring to a group and not to the plaintiff. However, my learned brother Mohd Arief Emran Arifin JC disagreed and held at pp. 499 to 500 that:

[40] As said earlier, the Facebook posting was posted after the video posting on 29 July 2019 that referred to the plaintiff, where the individuals demonstrating were seen to be saying "Tolak-tolak Mahfuz". This is an important factor. *The context and how the said article was published would be an important consideration to determine whether a reasonable reader would have inferred that the plaintiff was liable as alleged by the defendant.*

[41] *Even those who read the Facebook posting and subsequently made various comments, understood that the said posting was referring to the plaintiff …*

[42] Given the above, when I consider the publication as a whole and in the context of the said representations, one cannot escape that they objectively refer to the plaintiff and no one else. I do not accept the arguments raised by the defendant on this issue. I also repeat my finding as to the meaning of the said Facebook posting as I have stated earlier … (emphasis added)

[19] Looking at the facts and circumstances that led to the publication of the impugned postings, it can be concluded that the defendant, at all times, intended to use the phrase "laki bini" to refer to the plaintiffs. The defendant is aware of the controversy surrounding the plaintiffs at the time since she admitted in her defence that the defendant's first Tweet was regarding Benzahid's apology video. This was also agreed by DW1 during cross-examination by the plaintiffs' counsel:

[Notes of Proceedings at pages 311-312]

PC(AH): Baik. Disebabkan kamu tidak bersetuju, dan kamu kata itu adalah jiran kamu, perenggan (h), muka surat 56, kamu nyatakan di sini "Defendan menyatakan dan menegaskan bahawa tuduhan pernyataan fitnah pertama tersebut merupakan inferens berdasarkan tindakan-tindakan Plaintif-Plaintif memberikan amaran terhadap pengguna Twitter serta tindakan mereka memuatnaik video permohonan maaf tersebut." Adakah kamu tidak bersetuju dengan inferens ini? Ini inferens kamu, pembelaan kamu.

Bersetuju atau tidak?

DW1: Setuju (emphasis added)

[20] Clearly the defendant has admitted, both in her pleadings and in her testimony, that the publication of the first impugned statement was consequent to the plaintiffs' warning to the Twitter users. This obviously confirms my finding that the defendant knew and intended to refer the phrase "laki bini" to the plaintiffs. This court also take the timing of each of the impugned postings as a consideration to see whether the defendant at all times was referring to the plaintiffs. The first defamatory statement was published merely seven minutes after the defendant's second tweet. This further supports my finding to answer the question whether the phrase 'laki bini' actually refers to the plaintiffs in the affirmative. Moreover, the defendant's second tweet has, in like manner, laid out that the plaintiffs' names were intentionally excluded to ensure that they would not be aware of the impugned postings.

[21] The defendant did not refute all these. Instead, learned counsel of the defendant argued that the commentors could not be considered as the 'reasonable man' to determine this issue since these commentors had already known the controversies surrounding the plaintiffs. To support his

contention, he then referred to the decision in *Fitters Diversified Sdn Bhd & Ors v. Mohd Roslan Mahayudin & Ors* [2022] 1 LNS 313; [2022] MLJU 290 and *Datuk Seri Anwar Ibrahim* (*supra*). He argued and relied on the *ratio* in *Datuk Seri Anwar Ibrahim* (*supra*), where Rosilah Yop JC reiterated the *ratio* of *Morgan v. Odhams Press Ltd and Another* [1971] 2 All ER 1156 at p. 617 that:

> [29] … But here the question is not whether the words are defamatory. It is conceded they are, if they refer to the plaintiff. The question is one purely of identify. 'Are the words capable of being understood to refer to the plaintiff?'. In my view, a somewhat more exacting test should be predicated where the question is one of identity. It is not sufficient for the reader to say 'I wonder if the article refers to Johnny Morgan' nor is pure speculation sufficient. Nor is it sufficient that a reasonable person believes that the words refer to the plaintiff. *The test is an objective one. The ordinary reader must be fair-minded and not avid for scandal. He must be unduly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff.* (emphasis added)

[22] I find that the defendant's submission on this is misplaced. Indeed, as Her Ladyship Rosilah Yop JC had quoted, the *ratio* of *Morgan* (*supra*) is clear: the test is an objective one. The reader must have rational grounds for his belief that the words refer to the plaintiff. In our present case, the impugned postings were posted on Twitter, which is a social media platform that has thousand nee millions of users around the world. For this reason, it is just for this court to consider the replies and/or comments made by other Twitter users regarding the impugned postings. As mentioned earlier, other Twitter users have instantly related the first defamatory statement with the plaintiffs!

[23] Also, for the fear of repeating, the timing of the publication plays an important role in my consideration. It is to be noted that the first tweet, the second tweet, and the impugned postings were all published by the defendant around the same time and same night the apology videos were reposted by the second plaintiff and the plaintiffs went viral again. The content of the first tweet and the second tweet rightly show that the defendant was referring to the stroller incident and the apology videos. As mentioned earlier, the context and how the statements were published would be important consideration for the courts. When this context and the prelude are pieced together in this case, it is obvious that the defendant referred to the plaintiffs in this case when the impugned postings were published. The comments by the other Twitter users could further support this.

[24] The defendant's counsel further premised that the inability to delete the replies and/or comments is one of the perks of Twitter, hence it was beyond the control of the defendant. To support his contention, he relied on the dissenting judgment of Her Ladyship Nallini Pathmanathan FCJ in *Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor* [2021] 3 CLJ 603; [2021] 2 MLJ 652.

[25] On this issue, I am agreeable with the plaintiffs' counsel that the observation quoted from *Mkini Dotcom* (*supra*) was only a dissenting view. I am also in agreement with the plaintiffs' further submission that this claim was not against the third parties' commentors, or the content therein hence whether the defendant has control over those comments is irrelevant. But the comments from these third parties commentors are crucial for us to know whether the other Twitter users would understand and refer the first defamatory statement to the plaintiffs here. What is crucial is that the comments show that the readers/followers of the defendant's Twitter account would naturally link the phrase 'laki bini' in the first defamatory statement with the plaintiffs.

[26] Also, it is essential to note that as in any other defamation cases, it is always the duty of the court to interpret and determine what would a reasonable reader's take on the impugned statements. By my analysis of the circumstances surrounding the publication of the impugned postings, in particular the publication the defendant's first and second tweets few minutes before the publication of the first defamatory statement, it is my finding that reasonable readers would naturally take the phrase 'laki bini' in the first defamatory statement to refer to the plaintiffs. This is further supported by the comments by the other Twitter users mentioned above.

[27] In addition, the defendant tried to deny this by alleging that the "laki bini" in the first defamatory statement was referring to her neighbours. However, this defence fell short. The plaintiffs submitted that since the defendant claimed otherwise, the burden of proof is on her to prove her defence. I agree with the plaintiffs' submission on this. When the plaintiffs have established their case, the burden then shifts to the defendant to denounce or refute this. This the defendant has failed to do. Other than merely saying that the first defamatory statement was allegedly referring to the defendant's neighbours, there is no other evidence that corroborates her contention. The defendant also failed to call other witnesses to testify that the said neighbours were indeed fighting at the material time (as alleged by the defendant). Not only that, the defendant, herself was not sure who the neighbours that she was referring to were. Also, she is unsure or just simply does not know much information about these neighbours. I find these very peculiar. During cross-examination, DW1, on numerous occasions, could not provide information about these 'laki bini':

[NOP at pages 254-256]

PC(AH): Baik. Dan Puan juga kata, ya, Puan menyokong perkara ini sebagai sebenarnya, in fact Puan merujuk kepada suatu pasangan yang benar-benar wujud, iaitu satu pasangan benar-benar gila yang mana orang itu adalah jiran Puan. Betul?

DW1: Betul.

PC(AH): Betul. Baik. Puan sekarang, soalan saya mudah. Di dalam Ikatan Pliding ini, ataupun di dalam Pernyataan Saksi ini, ataupun di dalam Ikatan Dokumen ini, saya tidak jumpa nama jiran Puan yang dikatakan gila. *So, my question today, what are their names? Apa nama jiran Puan yang gila tersebut?*

DW1: *Saya tak pasti.*

PC(AH): *Tidak pasti. How long you been neighbour to them?*

Berapa lama berjiran dengan dia?

DW1: *Sehingga hari ini, 7 tahun.*

PC(AH): *I think it's more. Sebab 2014 pun, Puan sudah buat komen tentang laki bini gila. Today is 2022.*

DW1: *8 tahun, minta maaf.*

PC(AH): *8 years. Even more. Okay, baik. You don't even know the name of your neighbour. Tak tahu nama jiran, dah 8 tahun berjiran?*

DW1: *Saya tak pasti.*

…

PC(AH): But, for 8 years don't even know their names. Betul?

DW1: Betul.

[NOP at page 279-280]

PC(AH): Rawak ya? Baik. Saya cuba bantu Puan, mungkin sebenarnya Puan beranggapan kepada laki bini gila, iaitu jiran Puan berbangsa India di belakang rumah, sebab kita nampak ianya berlaku pada tarikh, malam yang sama dan berturut-turut cerita pasal orang gila. *Satu tweet, dua tweet, tiga tweet. Jadi, mungkin ianya satu kesinambungan yang Puan cuba cipta tanpa Puan sedar merujuk kepada jiran Puan yang gila. Boleh setuju?*

DW1: *Betul.*

PC(AH): Boleh jadi ya?

DW1: Boleh jadi.

PC(AH): That's good. Adakah jiran Puan itu ada anak?

DW1: Ada.

PC(AH): *You don't know their names, but they know … you know they ada anak?*

DW1: *Betul.*

PC(AH): *Okay. How many?*

DW1: *Saya tak pasti.*

PC(AH): *Tak pasti. Anaknya besar mana?*

DW1: *Saya tak pasti.*

PC(AH): You don't know. Lelaki perempuan?

DW1: Lelaki.

PC(AH): Lelaki. Okay. One two three?

DW1: Saya tak pasti

PC(AH): Nampak seorang sahaja? Nampaknya seorang sahaja la dalam 8 tahun tu nampak seorang sahaja budak lelaki?

DW1: Nampak berlain-lain lah.

…

PC(AH): Okay. Alright. *Bagaimana Puan tahu itu anak mereka? Bukan, you know, cousins, anak buah, dan sebagainya? How you know?*

DW1: *Saya tak pasti.*

PC(AH): Puan, we are in court, so you know, I want some very confident, confirmed answer from you. *So, basically, you are not even sure whether this laki bini ada anak dan sebagainya. Is that the real answer?*

DW1: *Saya tak pasti.* (emphasis added)

[28] Nonetheless, this court acknowledges that there was a statement published by the defendant back in 2014 concerning the so-called neighbour, "Wey bising ah. Dah la baru sampai rumah India belakang rumah gaduh laki bini. Dah la penat ni." (Noisy. Already I just arrived home yet the Indian house behind my house the husband-and-wife quarrel). However, considering the timeline between this statement and the first defamatory statement, I see no nexus between the incident five years ago and this tweet unless the defendant could forward corroborative evidence to relate them. DW1 also agreed with the suggestion made by the plaintiffs' counsel that there were no other statements posted by her every time the alleged neighbours were fighting.

[Notes of Proceedings at pages 265-267]

PC(AH): Baik, Tidakkah Puan setuju kepada saya, jika sekiranya pada hari ini kita ada satu dokumen di hadapan kita yang menunjukkan how consistent, how religious you are. Every time there's a fight by your neighbour, you akan tweet laki bini gila bergaduh di belakang rumah.

Kalau ada series of tweet daripada masa 5 tahun, ini mungkin this whole case akan lumpuh untuk Plaintif kerana you benar-benar membuktikan memang ada laki bini yang gila dan you consistently tweet every time so that maybe the court can

A believe. Mungkin betul laki bini gila end of story yang tweet pada 24/6/2019, bukannya Plaintif-Plaintif. But you didn't do that. So, my question, you didn't do that, tak ada tweet-tweet bukti yang boleh menyokong tersebut. Setuju atau tidak?

DW1: Setuju.

B **[29]** Again, it is my finding that the burden of proof has shifted and it is on the defendant to prove that the phrase "laki bini" mentioned in the first defamatory statement was referring to her neighbours since she claimed that it referred to her neighbours. If the defendant is too concerned about invading her neighbours' privacy as she claimed in her testimony, the defendant could C always call other witnesses to testify or confirm this. Any witness who could confirm that there was indeed a fight between the neighbours that particular night could corroborate this. Since this has not been done and bearing in mind my earlier finding that the phrase "laki bini" in the first defamatory statement is indeed naturally referring to the plaintiffs, my answer for the D first issue is in the affirmative: that the phrase "laki bini" on the first defamatory statement was indeed referring to the plaintiffs.

[30] Moreover, I also find that the defendant has expressly stated in the fourth defamatory statement "… bukannya orang yang support kalau kita meroyan dekat social media" (… not someone who will support if we frolic/ E romp through social media). Now, this clearly indicates that the husband and wife in issue were someone from the social media and not her neighbour in real life. The fact that the publication of the first and second tweets, the impugned postings and the re-posting of the apology videos by the second plaintiff causing the plaintiffs went viral again were contemporaneous events F happened together in time, would further demonstrate that the defendant was indeed referring to the plaintiffs here. The contents of the first and second tweets posted by the defendant further support this. Thus, the attempt by the defendant to cover-up and whitewash the impugned postings has, again, failed.

G *Whether The Impugned Postings Bear Defamatory Imputation?*

[31] Now, the next issue that needs to be addressed is whether the impugned postings bear defamatory imputation against the plaintiffs. The essence of a defamatory statement is its tendency to lower a person in the estimation of right-thinking members of society or to cause him to be H shunned or avoided or to expose him to hatred, contempt, or ridicule. In *Asia Pacific Higher Learning Sdn Bhd v. Eagle One Investment Sdn Bhd & Ors* [2018] 1 LNS 56 it was held by Akhtar Tahir J that (at para. [9]):

> In determining whether the article is defamatory the article must be read as a whole in an objective manner using the standard of an ordinary I reasonable man. The truth or otherwise of the contents is another indicator whether the article is defamatory or not. The introduction and

conclusion as mentioned in the article is also an indicator as to what the writer is trying to convey. Whether the writer had made efforts to verify the contents will give a glimpse of the intention of the writer in writing the article.

[32] Likewise, as highlighted by His Lordship Gopal Sri Ram JCA (as he then was) in *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371 at p. 466 (CLJ); p. 374 (MLJ):

> It cannot, I think, be doubted that the first task of a court, in action for defamation, *is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published.* As Lord Morris put in *Jones v. Skelton* [1963] 3 All ER 952 at p. 958:
>
> > The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of words (see *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include *any implication of inference which a reasonable reader, guide not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.* (emphasis added)

[33] The main argument raised by both parties was concerning the word 'gila' used in several of the impugned postings. The plaintiffs submitted that the word 'gila' in its literal meaning has a negative implication in which it refers to someone whose state of mind or behaviour is crazy, insane or lunatic. The plaintiffs referred to the definition provided in Kamus Dewan (online edition) to support their contention. Kamus Dewan, the most authoritative Malay language dictionary has provided, among other, the following definitions to the word 'gila':

(i) tidak sihat atau tidak waras fikirannya (otaknya, ingatannya): kelakuannya spt orang;

(ii) penyakit tidak sihat otak (fikiran, ingatan);

(iii) bahasa rempang Bahasa, kurang sihat sedikit atau tidak panjang fikirannya (cepat marah, pemberani, tidak malu, dll perangainya);

(iv) bertingkah laku, bersikap dsb spt orang gila, seolah-olah, seakan-akan atau pura-pura gila; and

(v) berbuat dgn sekehendak atau sesuka hati tanpa memikirkan akibat atau kesannya dsb.

[34] In reply, the defendant argued that the word 'gila' does not necessarily have a negative implication and should be given a more flexible definition since the impugned postings were published on social media, *ie*, Twitter. The defendant also submitted that this court need to consider the variety of language styles, slangs and/or 'loghat' (vernacular colloquial) and not limited to the use of sarcastic sentences, casual and/or relaxed sentences.

[35] This was admitted by PW2 in her cross-examination by the defendant's counsel:

[Notes of Proceedings at pages 95-96]

DC(AA): Okay, jadi … saya ulang lagi soalan saya lagi sekali ya.

Bahasa yang digunakan … saya cakap secara general lah … secara umum Bahasa yang digunakan oleh pengguna-pengguna Twitter ataupun Facebook ataupun Instagram, bahasa yang selalunya digunakan adalah bahasa yang campur. Campur Bahasa Inggeris, Bahasa Melayu, ada yang bahasa pasar, ada yang menggunakan loghat, setuju ini secara umum? Kita tidak merujuk kepada kes puan.

PW2: General saya setuju.

DC(AA): Okay, terima kasih puan. Saya cadangkan puan juga adalah antara pengguna-pengguna yang menggunakan bahasa santai tersebut di dalam platform Instagram atau di Twitter?

PW2: Setuju

DC(AA): Setuju saya katakan secara lazimnya pengguna-pengguna di Twitter ini, saya rujuk ini di Twitter lah.

Tidak … maksud saya pengguna di Twitter jarang sekali menggunakan bahasa rasmi ataupun bahasa baku di dalam kandungan Twitter ini.

PW2: Setuju.

[36] The defendant also cited the case of *Charles Ganske v. Louise Daphne Mencsh* (No. 19-CV-6943 (RA)) where the United States District Court Southern District of New York held that (at p. 11):

… Here, the context is Twitter, an Internet forum. "New York courts have consistently protected statements made in online forums as statements of opinion rather than fact." *Bellavia Blatt & Crossett, P.C. v. Kel & Partners LLC*, 151 F. Supp. 3d 287,295 (E.D.N.Y. 2015); see also *Brahms v. Carver*, 33 F. Supp. 3d 192, 199 (E.D.N.Y. 2014) (noting, in concluding that an allegedly defamatory statement is nonactionable opinion, that it "was made on an internet forum where people typically solicit and express opinion, generally using pseudonyms"); Biro, 2014 WL 485190l, at *4 (explaining that its dismissal of the defamation claim was "buttressed by the context of the publications in question: an online website that was essentially a blog");

Versaci v. Richie, 30 A.D. 3d 645,649 (3d Dep't 2006) (concluding that an alleged defamatory statement was an opinion, in part, because it "was asserted on an Internet public message board, which, as characterised even by plaintiff, is a forum where people air concerns about any matter"); see also *Eglazaryan v. Zalmayev*, 880 F. Supp. 2d 494, 507 (S.D.N.Y. 2012) (explaining that statements published in "editorial formats … create the 'common expectation' that the communication would 'represent the viewpoint of [its] author [ ] and … contain considerable hyperbola, speculation, diversified forms of expressions and opinion.)

In analysing the unique context of statements made on Internet fora, courts have emphasized the generally informal and unedited nature of these communications. This context, as some courts have concluded, leads "readers [to] give less credence to allegedly defamatory remarks published on the Internet than to similar remarks made in other contexts … (emphasis added)

[37] PW2 during her cross-examinations by the defendant's counsel, admitted that the phrase 'gila' could be used in its non-literal meaning and depends on the context of the sentence:

[Notes of Proceedings at pages 156-158]

DC(AA): Oh sorry … sorry … maaf. Okay seterusnya, saya tanya pada puan, puan pernah gunakan perkataan gila tak?

PW2: Pernah

DC(AA): Dalam mana-mana platform puan, pernah ya. Setuju saya cadangkan bahawa perkataan gila dan mental yang digunakan oleh…maaf sorry. Ini soalan yang lain. Setuju saya katakan perkataan gila yang digunakan oleh Defendan di dalam tweet pernyataan tuntutan tersebut adalah satu bentuk selangga atau ekspresi melalui penulisan Defendan di dalam Twitter?

PW2: Tak setuju.

DC(AA): Tak setuju. Setuju saya katakan, sebab puan tadi kata puan gunakan perkataan gila dalam platform Twitter puan ataupun Instagram puan, Setuju saya katakan, bila puan gunakan perkataan gila di dalam platform puan, puan tidak merujuk pun kepada individu tersebut ataupun perkataan gila tersebut sebagai sesuatu yang kesihatan mental yang tidak sihat ataupun disahkan mengalami penyakit mental oleh mana-mana hospital.

Setuju tak bila puan guna perkataan gila tu tak bermaksud tak semestinya membawa maksud literally gila. Secara literal dia adalah gila.

PW2: Kena tengok ayatlah

DC(AA): Okay kalau kita tengok ayat itu, kita tengok ya puan.

Rujuk muka surat 49 sehingga 51, Ikatan Dokumen Bersama. 49 sehingga 51, Ikatan Dokumen Besama. 49 sehingga 51, okay. Ini adalah tweet puan yang menggunakan perkataan gila.

PW2: Okay.

DC(AA): Okay boleh jelaskan tak kepada Mahkamah adakah gila yang digunakan oleh puan dalam muka surat 49, 50 dan 51 ini membawa maksud secara literal ataupun hanya sekadar penggunaan selanga ataupun Bahasa pasar.

Yang tidak membawa maksud secara literal.

PW2: Saya rasa sya cakap kat sini saya tak gila, "Aku pun tak gila". So saya betul-betul mean it saya tak gilalah.

DC(AA): Okay seterusnya yang ini yang bawah ini … tweet yang bawah ini muka surat 49. "haha orang gila kalau kita layan kita pun terikut gilanya". So maksudnya puan menuduh orang itu gila disebabkan disahkan mempunyai sakit mental ker atau gila bukan secara literal?

…

DC(AA): Soalan saya, maksud gila yang dimaksudkan oleh puan dekat sini adakah maksud gila ini puan kata orang itu gila sebab dia ada sakit mental ataupun gila hanya sebagai ekspresi sahaja kepada situasi tersebut.

PW2: Yang ini saya rasa untuk ekspresilah.

DC(AA): Untuk ekspresilah. So macam mana kita nak tahu ya, bila perkataan gila tu diguna secara literal ataupun perkataan gila itu diguna untuk secara ekspresi pada pendapat puan.

PW2: Macam ni saya tak serang dia secara berterusan. Itu ajelah statement saya

DC(AA): Bukan maksud saya pada pendapat puanlah, macam mana puan membezakan sesuatu perkataan gila itu dimaksudkan secara literal ataupun dimaksudkan secara santai ataupun ekspresi diri.

PW2: Bergantung kepada ayat itu

[38] For the most part, I agree with the defendant's submission that such phrase or word should be given a more flexible definition. As highlighted by the Federal Court in *Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee* [2019] 3 CLJ 729; [2019] 3 MLJ 720, the courts need to consider whether the word(s) complained is/are understood to be defamatory to an ordinary reasonable person within today's society (*ie*, at the time the words were uttered). The burden is on the defendant to convince this court that the usage of the word "gila" must be given a flexible definition.

[39] To do so, the defendant's counsel has attempted to illustrate that the other definition of the word 'gila' (as provided in the 4th edn of *Kamus Dewan*) also includes, "2. = tergila-gila terlalu amat ingin (suka, asyik, cinta, berahi) akan sesuatu" (2. =crazily too eager toward something). This they sought to adduce to show that the word "gila" can only be an expression. This is as explained by DW1 during re-examination:

[Notes of Proceedings at page 341]

DC(RA): Tadi juga, okay, habis soalan jiran Puan. Kita nak tanya tentang soalan perkataan "gila". Tadi ditanyakan kepada Puan, bila Puan membuat ciap … ciapan tersebut … menerbitkan ciapan-ciapan tersebut. Apakah maksud gila yang Puan niatkan, adakah gila secara medical ataupun gila yang lain. Puan jawab adalah gila yang lain. Dan, Puan tidak … tidak mengetahui sama ada dia gila secara medical dan ia adalah gila yang lain. Boleh terangkan gila yang lain yang bagaimana?

DW1: Dalam pengetahuan saya, penggunaan frasa gila itu sendiri meluas. Kita gunakan dalam sehari-harian. Contoh, Yang Arif, sedap gila, lapar gila. Itu penggunaan yang kita lakukan setiap hari. Jadi, bila saya katakan laki bini gila, tidak semestinya merujuk kepada keadaan ataupun mana-mana pihak secara medical. Sebab frasa gila itu sendiri kita gunakan sehariharian, Yang Arif. Terima kasih.

[40] While I am not bound by *Charles Ganske* (*supra*) which is an US District Court decision, the informal nature of Twitter stated in that case is noted. This, nonetheless, could not shield the tortfeasors from responsibilities and liabilities when their statements have derogated the reputation of the others. After scrutinising the impugned postings, especially, the first defamatory statement, I find that the word 'gila' is used in the context of its literal meaning of crazy, insane or lunatic. Unlike what had been suggested by learned counsel of the defendant, it is my view that, no matter how informal the expression could have been, the position and the understanding of the word 'gila' as crazy, insane or lunatic are more reasonable in its literal meaning in the first defamatory statement.

[41] I refer to the case of *Abdul Khalid Jafri Bakar Shah v. Party Islam Se Malaysia (PAS) & Ors* [2001] 4 CLJ 15; [2002] 1 MLJ 160 where His Lordship Kamalanathan Ratnam J viewed that the meaning in which the defendants intended the words to be understood was immaterial in determining whether the words were defamatory or not. There, the defendant contended that the impugned words were meant to be an entertainment. It was further opined that the test to determine the meaning of the impugned article was based on the understanding and the inference that was drawn naturally upon reading the said article by a person of reasonable intelligence.

[42] Kamalanathan Ratnam J reiterated that (at p. 23 (CLJ); p. 169 (MLJ)):

> In my view the test to be applied is to see the meaning and inference that would be drawn naturally upon reading the impugned article by a person of reasonable intelligence. So, in actions based on libel, the meaning of the writer is quite immaterial. It is not a question as to what the writer meant, but what he conveyed to those who read it …

[43] Therefore, with regards to the first defamatory statement, I find that in its natural and ordinary meaning, it implied that the plaintiffs were insane. Hence, it is capable of being defamatory. Likewise, the second defamatory statement is bound to be capable of being defamatory since it is a direct and consequential (five minutes after the first defamatory statement) insinuation that both plaintiffs are meant for each other because of their insanity and lunatic behaviour. The same applies to the third defamatory statement (about 30 minutes after the second defamatory statement) which implies that having parents who are 'gila' is shameful and that 'gila' is heredity and heritable. In all these statements, the word 'gila' can only mean insane or crazy or lunatic. To say that the word 'gila' is only a colloquial expression and not accusing someone as insane or crazy is too far-fetching, improbable and implausible. How could a colloquial expression justify the allegation that person who is 'gila' is shameful and that it is heredity and heritable?

[44] Besides, it is my finding from the listing in *Kamus Dewan* (a detailed meanings of 'gila' are listed in https://prpm.dbp.gov.my/Cari1?keyword =gila quoting the 4th edn of *Kamus Dewan*) that any reference to use the word 'gila' as informal or colloquial expression or exclamation would pair it with an adjective either before or after it. For example, the usage of the words 'sedap gila' (as stated by the defendant herself) or 'gila sedap' to mean very delicious or extremely delicious. Meaning, it would be used as an adverb for the adjective it has been paired with. Nothing as such had happened in the first or second or third defamatory statements. Instead, in all these statements, the word 'gila' is used as an adjective to explain the noun it has been paired with: 'laki bini' (husband and wife) (in first defamatory statement), 'lelaki' (man) and 'perempuan' (lady) (in second defamatory statement) and parents (in third defamatory statement). Also, in the first part of the third defamatory statement, it simply says, '… jangan jadi gila' (don't become insane). The same goes to the fifth defamatory statement '… macamana tak kena cop gila' (how can't be labelled as crazy). I see no reason to agree with the defendant that in all these places the word 'gila' is only used as an expression to enhance the description before or after it. There simply has nothing before or after it for it to enhance. In a similar vein, I see no reason to accept the submission by the defendant that the usage of the word 'gila' in these places is to mean "2. = tergila-gila terlalu amat ingin (suka, asyik, cinta, berahi) akan sesuatu" (crazily too eager toward something) as what the defendant has quoted from *Kamus Dewan* (4th edn). For the word

'gila' to be used for such purpose, it must be paired with something before or after it to show such passion. Thus, the colloquial expression 'gila bola' is used to describe that someone is fond of or passionate about football. Again, there is no such subject or object in these statements in the impugned postings to be able to use the word 'gila' for such purpose.

[45] Likewise, as per the entry '2. = tergila-gila terlalu amat ingin (suka, asyik, cinta, berahi) akan sesuatu' (crazily too eager toward something) in *Kamus Dewan* (4th edn), the root word 'gila' must have prefix 'ter' before it and the word 'gila' itself must be doubled in a typical Malay grammatic expression (hence, 'tergila-gila') for it to carry the meaning that someone was too passionate toward something or too eager to do something. Again, this never happens in the impugned postings. Thus, in all counts, the allegation of the defendant that the word 'gila' here never meant to describe someone as insane or lunatic is totally baseless.

[46] In our present case, if a reasonable reader reads the second until fifth defamatory statements on their own (and isolate from each other), some of these statements may not clearly refer to the plaintiffs or may not be damaging and capable to be defamatory. However, as per the approach suggested by Warby J in *Monroe v. Hopkins* (*supra*) (which was quoted by counsel for the plaintiff) for continuous and related entries in Twitter, the second, third, and fifth defamatory statements are capable of being defamatory as they were closely connected with the earlier defamatory statement (in the first defamatory statement). As such, these fourth defamatory statements, namely the first, second, third, and fifth defamatory statements, complete and complement each other in drawing one picture of alleging and derogating the plaintiffs as someone insane while the fourth defamatory statement supports my finding that the expression 'laki bini' in the first defamatory statement refers to the plaintiffs and not the defendant's neighbour.

The Defendant's Defence

[47] It is therefore, obvious that the impugned postings have indeed referred to the plaintiffs and could derogate the plaintiffs' reputation. Nonetheless, for the completeness of discussion, I shall now elaborate on the defences raised by the defendant. To begin with, the defendant in her pleadings, claimed that the impugned postings were only fair comments regarding the controversies surrounding the plaintiffs.

[48] The defence of fair comment is provided under s. 9 of Defamation Act 1957 where it says:

> In any action of libel or slander in respect of word consisting partly of allegation of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[49] As a rule, in order for the defendant to succeed in raising the defence of fair comment, there are four essential elements which must be fulfilled:

(i) the words complained of are comment, although they may consist of or include inferences of fact;

(ii) the comment is on a matter of public interest;

(iii) the comment is based on fact; and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

(See *Joshua Benjamin Jeyaretnam v. Goh Chok Tong* [1989] 1 LNS 34; [1989] 3 MLJ 1).

[50] In our present case, the defendant mainly argued that the impugned postings were only her opinions and/or comments towards the issues surrounding the plaintiffs. The defendant further submitted that the impugned postings were never made in malice or mockery against the plaintiffs. With due respect, I disagree. To be successfully protected by the defence of fair comment, all four elements must be established. The lack of any one of them would deprive the defendant of this defence. Undoubtedly, looking at the defendant's case and submission, I find that the defendant failed to fulfil all four elements mentioned in *JB Jeyaretnam* (*supra*). I see no reason how alleging someone as 'gila' without any medical basis is a comment or inferences of fact. These comments are also nothing of public interest. If the defendant is making the impugned postings as comments which are based on fact, she has to adduce evidence to establish the facts which are relying on. This, she has not done. Nothing has ever been adduced to suggest, prove, or establish the insanity or lunatic state of mind of the plaintiffs. Also, it is absolutely absurd to even suggest that the comments are one which a fair-minded person can honestly make on the facts proved. No facts have ever been established with regard to the plaintiffs' state of mind. Thus, the defendant has failed miserably to seek her defence under fair comment.

[51] I am also guided by a recent decision made by the Federal Court in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli* [2022] 5 CLJ 487; [2022] 3 MLJ 758. The main issue during the appeal of that case was whether the respondent entitled to rely upon the defence of fair comment to defeat the libel action. His Lordship Azahar Mohamed CJM in delivering the judgment had laid out a lengthy discussion on the fundamentals for the defence of fair comment. For starters, it is important to consider whether the impugned statement was a statement of fact or comment? His Lordship quoted *Gatley* at s. 12.6 in para. [35] which says:

> Through 'comment' is often equated with 'opinion', this is oversimplification. More accurately it has been said that the sense of comment is 'something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, *etc*'. *The first step is to determine the meaning of what the defendant has said in its context and for this purpose the law adheres to the normal rule that the words are treated as having single meaning. It is possible distinguish at least three situations.*
>
> (1) A statement may be a 'pure' statement of evaluative opinion which represents the writer's view on something which cannot be meaningfully verified – 'I do not think Jones are attractive'.
>
> (2) A statement which is potentially one of fact or opinion according to the context – 'Jones behaves disgracefully'.
>
> (3) As statement which is only capable of being regarded as one of a face and in no sense of opinion – 'Jones took a bribe' – but which may be an inference drawn by writer from other facts.
>
> *Fair comment clearly applies to the first situation; it applies to the second situation if, in the context, is to be understood as an expression of opinion (eg, because the writer has just described some controversial act of Jones); the third situation involves greater subtlety (or uncertainty).* (emphasis added)

[52] Applying this to the first defamatory statement, I find that it cannot be categorised as an opinion. In the first defamatory statement, which is the root of all, the sentence has stated as-a-matter-of-factly "Laki bini gila. End of story." (Husband and wife are crazy/ insane. End of story). This statement does not in any way state the opinion of the maker. It simply said as if in point of fact that the couple is crazy or insane. It would be different for example, if the statement says, '… macam gila' or 'rasanya laki bini ini gila'. In such cases, it could be accepted that the maker is only expressing her opinion or belief. In our present case, the statement was clearly stated in an 'as-of-fact' manner. Hence, this cannot be merely the opinion of the maker.

[53] Besides, the phrase "Laki bini gila. End of story" cannot in any way be constituted as a matter of public interest. To reiterate His Lordship Azahar Mohamed CJ (Malaya) at para. [54] of *Dato' Sri Dr Mohamad Salleh* (*supra*):

> [54] … The breadth of the defence of fair comment only revolves around comments or inferences honestly made based on certain existing substratum of facts that are truly stated. *What is required is that the comment has to identify, at least in general terms, the matters on which it is based. This, in my view, the respondent had made out to admit the defence of fair comment…The primary reasoning for the creation of the defence of fair comment is the desirability that a person should be entitled to express his view freely about a matter of public interest.* (emphasis added)

[54] As mentioned earlier, I see nothing in the impugned postings that justify them as a matter of public interest. Ultimately, the impugned postings also were never a matter of public interest. As held by His Lordship Suffian LP in the then Federal Court case of *Henry Wong Jan Fook v. John Lee & Anor* [1975] 1 LNS 57; [1976] 1 MLJ 231, the defence of fair comment cannot be on any matter but must be on some matter of public interest.

[55] Next, the defendant also submitted that additional sentence after the *Surah* stated in the second defamatory statement made it merely her opinion and has nothing to do with the plaintiffs. Again, I disagree. As mentioned previously, the earlier tweets or replies of the initial offending tweet can be treated as a part of the context of the offending tweet if it is sufficiently closely connected in time, content or otherwise that it is likely to have been in the hypothetical reader's view. Since the first defamatory statement had claimed the plaintiffs as "gila" it can be correctly presumed that the additional sentence in the second defamatory statement also refers to the first and second plaintiffs as appropriately matched since they were both "gila". Hence, clearly the second defamatory statement was a personal attack on the plaintiffs' marital relationship. Surely, this is not a comment that a fair-minded person could honestly be making based on the issues surrounding the plaintiffs. To make it even worse, as established during trial the Shariah authority cited by the defendant is not even correct! There was no *surah* (Quranic chapter) or ayat (Quranic sentence) as alleged in the second defamatory statement to begin with. The nearest we have is a Quranic sentence which is not even 30% similar with the statement mentioned in the second defamatory statement. No mentioning of the word 'gila' at all in this Quranic sentence. Thus, the reliance and applicability of fair comment must fail.

[56] This is indeed admitted by DW1 herself.

[Notes of Proceedings at pages 275-276]

PC(AH): Tak pasti. Now, alright. Puan, dengan izin mahkamah, because this is quite famous, Surah, dengan izin mahkamah, I just want to listen and I'm going to ask you the questions. Surah An-Nur ayat 26, "-wanita-wanita yang keji adalah untuk lelaki-lelaki yang keji, dan lakilaki yang keji adalah buat wanita-wanita yang keji. Wanita-wanita baik untuk laki-laki yang baik, dan laki laki baik adalah untuk wanita-wanita yang baik. Mereka itu bersih dari apa yang dituduh oleh mereka bagi mereka ampunan dan rezeki yang mulia." Surah An-Nur ayat 26. Now listen to my questions, adakah ini yang Puan maksudkan?

DW1: Betul.

PC(AH): Betul. I'm picking rahib Surah. It's not Hadis, Puan. Now Puan, dalam Surah yang bacakan tadi, tak ada perkataan gila. Betul atau tidak?

DW1: Betul.

PC(AH): Betul. Yang digunakan keji. Betul?

DW1: Betul.

PC(AH): Yang digunakan baik. Betul?

DW1: Betul.

...

PC(AH): Tak setuju. Tapi yang pasti, tweet fitnah kedua kamu ini langsung tak berbunyi seperti Surah yang saya baca tadi. Betul atau tidak?

DW1: Betul.

[57] Since none of the elements of the defence of fair comment was fulfilled by the defendant, the defence is dismissed accordingly.

Damages

[58] Overall, I do find that the impugned postings were simply an attack against the plaintiffs. The defendant should have been more responsible in posting her thoughts or comments online. Freedom of speech is to be preached, but it should be done within the limits and not at the expense of damaging and ruining the images or reputation of the others. As a rule, it is presumed that one man's reputation is always good, and a plaintiff is not required to prove his reputation, or to prove that he has suffered any actual loss or damage. As held in the English Court of Appeal case of *John v. MGN Ltd* [1997] QB 586 at 607:

> In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; *the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.*
>
> (emphasis added)

[59] In the present case, the defendant's action in ascribing the plaintiffs as "gila" surely can be considered as grave and severe accusation that led to negative implications against the plaintiffs' integrity, credibility, and personal and professional reputation.

[60] Furthermore, this court must also consider the extent of the publication of the impugned postings. In the present case, both parties are social influencers who have quite a substantial following on the respective social media platforms:

(i) the first plaintiff has 4,830 and 184,000 followers on Twitter and Instagram respectively.

(ii) the second plaintiff has 34,800 and 389,000 followers on Twitter and Instagram respectively.

(iii) the defendant has 27,700 followers on Twitter.

Thus, the possibility of limited publication is out of the question. There are indeed few hundred thousand readers of the impugned postings out there.

[61] As highlighted in *Christina Liew Chin Jin v. Leksun Injil* [2021] 1 LNS 1157; [2021] MLJU 1373 the mode and extent of publication of the impugned statement was wide since it was published on social media platforms such as WhatsApp and Facebook. Therefore, the courts can take judicial notice that publication on the internet means wide publication.

[62] In addition, I also find that the defendant has every opportunity to verify or make amends with the plaintiffs, but she did not do so. The defendant has ample time to make a retraction or clarification before the impugned postings went viral and spiral into a defamation suit. Instead, she denied that it has ever referred to the plaintiffs. Hence, the defendant's action here should be taken into account. I am guided by the decision of the Federal Court in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor* [2018] 1 CLJ 145 (at p. 213):

> [82] In the present appeal, the learned trial judge had considered *the seriousness of the libel, the extent of the publication, the plaintiff's reputation and the adverse effect of the defamatory statements on his dignity and reputation, and the conduct of the defendants including absence of remorse for defaming the plaintiff and in urging the court not to award any damages or costs to the plaintiff, all of which the learned trial judge was entitled to take into account in assessing damages.* Then, there is the award in *MGG Pillai*'s case which we have to put into the scale to consider the award made by the learned trial judge. Whilst we are not prepared to share the Court of Appeal's view that the learned trial judge had not been influenced by the award in *MGG Pillai*, he would have awarded the global sum of RM1 million to the plaintiff for compensatory, aggravated, and exemplary damages. This, in our view, warrants appellate interference. (emphasis added)

Conclusion

[63] To summarise, this court find that the plaintiffs have proven that the impugned postings are defamatory against them. The defendant has no valid defence in the publication of the impugned postings. Thus, the plaintiffs' claim is allowed. Based on the aforesaid reasons, it is ordered that judgment be entered against the defendant as follows:

(i) a global sum of RM15,000 is to be paid by the defendant to each of the plaintiffs;

(ii) a full and unequivocal public apology on terms to be approved by the plaintiffs is to be published on the defendant's Twitter account and other social networking sites designated by the plaintiffs and accessible to the public;

(iii) an injunction to restrain the defendant from further publishing the first defamatory statement, the second defamatory statement, the third defamatory statement, the fourth defamatory statement, and the fifth defamatory statement and/or any such defamatory and/or malicious and/or harmful falsehood against the plaintiffs in any social networking sites including but without limitation to Twitter and/or any online mass media;

(iv) 5% per annum judgment interest from the date of judgment to the date of full settlement; and

(v) costs of RM30,000 (subject to allocator) is to be paid by the defendant to the plaintiffs.